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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11	JORGE SALVADOR MORENO,	)	Case No. 13cv2186-DMS (MDD)
12	Plaintiff,	)	
13	v.	)	REPORT AND
14	BILL GORE, et al.,	)	RECOMMENDATION RE:
15	Defendants.	)	DEFENDANTS' MOTION TO
16		)	DISMISS.
		)	[ECF NO. 15]

17 This Report and Recommendation is submitted to United States  
18 District Judge Dana M. Sabraw pursuant to 28 U.S.C. § 636(b)(1) and  
19 Local Civil Rule 72.3 of the United States District Court for the  
20 Southern District of California.

21 **I. Procedural History**

22 On September 12, 2013, Plaintiff Jorge Salvador Moreno, an  
23 inmate proceeding *pro se* and *in forma pauperis*, filed a civil rights  
24 Complaint pursuant to 42 U.S.C § 1983. (ECF No. 1.) Plaintiff's sole  
25 claim in his Complaint appears to be that the conditions of his  
26 confinement violate his Eighth Amendment rights. (*Id.*) Specifically,  
27 Plaintiff states that his placement in isolation, rather than  
28 administrative segregation or general population, violates his rights

1 and his sole prayer for relief is that he be transferred back to  
2 administrative segregation. (*Id.*) On November 12, 2013, Defendants  
3 filed the instant Motion to Dismiss. (ECF No. 15.) On January 8, 2014,  
4 Plaintiff filed a Response in Opposition (“Opp”). (ECF No. 17.) On  
5 February 4, 2014, Defendants filed their Reply to Plaintiff’s Response.  
6 (ECF No. 18.)

## 7 **II. Statement of Facts**

### 8 **1. Plaintiff’s Confinement**

9 Since on or about August 12, 2009, Plaintiff has been in custody at  
10 the Vista Detention Facility awaiting trial in a state court action, case  
11 number SCD 208824. (ECF No. 15-1 at 13.) Plaintiff was transferred  
12 to Vista from another state prison where he was serving a sentence for  
13 a separate murder conviction.

14 According to Plaintiff, on December 17, 2010, Deputy District  
15 Attorney Mark Amador caused Plaintiff to be removed from  
16 administrative segregation and placed in isolation. (ECF No. 1 at 1.)  
17 Plaintiff was told that the reason for the transfer was that Plaintiff is  
18 too dangerous to inmates, staff, and the public, but Plaintiff contends he  
19 never received notice of a rule violation regarding these allegations.  
20 (*Id.*)

21 Plaintiff states that he has remained in isolation since December  
22 2010. (*Id.*) He does not interact with anyone while in isolation and  
23 does not have a window. (*Id.* at 1-2.) Plaintiff also contends that he is  
24 not in a proper cell, but rather a holding cell that has been converted to  
25 a cell by the addition of a bed, phone, TV, shower, and toilet. (*Id.* at 2.)  
26 There is a camera pointed directly at the cell which monitors Plaintiff at  
27 all times, even when he uses the toilet. (*Id.*)

28 Plaintiff further contends that this unique treatment extends to

1 his medical care. (*Id.*) Rather than being taken to see a doctor, a doctor  
 2 is brought to Plaintiff. (*Id.*) These visits are inferior because the doctor  
 3 does not take Plaintiff's blood pressure, temperature, or weight. (*Id.*)  
 4 Plaintiff asserts that he has difficulty communicating with the doctor  
 5 because there are always several deputies in the room with him. (*Id.*)  
 6 Further, Plaintiff states that the nature of these visits has lead to  
 7 problems receiving and taking medication, despite the fact that Plaintiff  
 8 suffers from chronic pain. (*Id.* at 3.)

9 Plaintiff also has difficulty receiving legal visits while in isolation.  
 10 (*Id.*) His attorneys are not allowed to bring in computers for Plaintiff to  
 11 use to review documents, and deputies listen in on his conversations  
 12 with attorneys. (*Id.*) Plaintiff also experiences delays receiving mail.  
 13 (*Id.*) Plaintiff has repeatedly complained about the conditions of his  
 14 confinement to deputies, but officials have refused to place Plaintiff  
 15 back into administrative segregation. (*Id.* at 4-5.) Plaintiff contends  
 16 that confinement in isolation is adverse to his mental health and he  
 17 experiences behavioral changes, mood swings, and depression. (*Id.* at  
 18 7.)

## 19 **2. Prior State Court Actions Challenging Plaintiff's** 20 **Conditions of Confinement**<sup>1</sup>

21 On January 10, 2012, Plaintiff filed a Petition for a Writ of  
 22 Mandate to Remedy Unconstitutional Conditions of Pretrial  
 23 Confinement in San Diego County Superior Court. (ECF No. 15-2 at 9.)  
 24 In his Petition, Plaintiff contended that his placement in isolation  
 25 violated his constitutional rights. (*Id.* at 13.) Specifically, Plaintiff  
 26 stated that he had been placed in a holding cell not intended to serve for  
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28 <sup>1</sup>Defendants request judicial notice of these decisions and their relevant  
 filings. (ECF No. 15-1 (Notice of Lodgment and Request for Judicial Notice).)  
 The Court takes judicial notice pursuant to Fed. Rule of Evidence 201(b)(2).

1 continuous incarceration, that he lacked adequate contact with legal  
2 counsel, that isolation from other inmates was harmful to his mental  
3 state, and that the conditions were otherwise below minimum  
4 acceptable standards. (*Id.* at 19-30.) On March 8, 2012, a hearing was  
5 held on Plaintiff's Petition. After hearing argument from both sides, the  
6 court found that the conditions of Plaintiff's confinement did not violate  
7 his constitutional rights, and accordingly denied the Petition. (*Id.* at 3.)  
8

9 In addition to the Petition for a Writ of Mandate, Plaintiff also  
10 filed a Petition for Writ of Habeas Corpus in San Diego County Superior  
11 Court, case number HCN 1177 (CSD 2088824, SCD 226640), on the  
12 same grounds. On July 1, 2011, the superior court issued an Order  
13 Denying the Petition. (ECF No. 15-2 at 80-84.) The superior court  
14 noted that Plaintiff was placed in isolation because he: had threatened  
15 other inmates and their families while in administrative segregation;  
16 had a record of numerous assaults while in custody; had been  
17 improperly communicating with people outside the jail, including the  
18 attorney prosecuting his case, in part by sending mail through other  
19 inmates; and that Plaintiff had asked another inmate (who was actually  
20 serving as an informant) to commit various crimes when the inmate  
21 was released from prison, including the murder of the family member of  
22 a witness scheduled to testify against Plaintiff. (*Id.* at 81-82.) Plaintiff  
23 had also asked the informant to murder the attorney prosecuting  
24 Plaintiff's case, and later indicated that he had arranged for another  
25 person to perform the murder. (*Id.* at 82.) The superior court found  
26 that Plaintiff's placement in isolation only limited his communication  
27 with other inmates, and that Plaintiff had made no showing that his  
28 placement in isolation restricts him in any way or is not justified based

1 on Plaintiff's actions while in custody. (*Id.*) Accordingly, the court  
2 found that the conditions of Plaintiff's confinement did not violate any  
3 Constitutional right.

### 4 **III. Legal Standard**

5 A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests the  
6 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th  
7 Cir. 2001). "Federal Rule of Civil Procedure 8(a)(2) requires only a  
8 short and plain statement of the claim showing that the pleader is  
9 entitled to relief. Specific facts are not necessary; the statement need  
10 only give the defendant fair notice of what the ...claim is and the  
11 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93  
12 (2007) (internal citations omitted). Nevertheless, "[w]hile a complaint  
13 attacked by a Rule 12(b)(6) motion to dismiss does not need detailed  
14 factual allegations, a plaintiff's obligation to provide the grounds of his  
15 entitlement to relief requires more than labels and conclusions, and a  
16 formulaic recitation of the elements of a cause of action will not do."  
17 *Bell v. Twombly*, 550 U.S. 544, 555-56 (2007). Thus, while specific  
18 detail is not required, every complaint must, at a minimum, plead  
19 "enough facts to state a claim for relief that is plausible on its face." *Id.*  
20 at 547; *Weber v. Dep't of Veterans Affairs*, 521 F.3d 1061, 1066 (9th Cir.  
21 2008).

22 The court must assume the truth of the facts which are presented  
23 and construe all inferences from them in the light most favorable to the  
24 non-moving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.  
25 2002). A *pro se* party's pleadings should be construed liberally. *Id.*  
26 However, "[f]actual allegations must be enough to raise a right to relief  
27 above the speculative level on the assumption that all the allegations in  
28 the complaint are true." *Bell*, 127 550 U.S. at 555. Thus, the court is

not required to “accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (internal citation omitted). Furthermore, the court may not “supply essential elements of the claim that were not initially pled.” *Ivey v. Bd. of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

#### **IV. Analysis**

In their Motion, Defendants contend that Plaintiff’s claim should be dismissed for two reasons. (ECF No. 15.) First, Defendants contend that Plaintiff’s claim is barred by *res judicata*. (*Id.* at 2.) Second, Defendants contend that Plaintiff’s claim fails because the evidence presented in Plaintiff’s state court cases shows that Plaintiff was properly placed in isolation because he is a threat to “inmates, deputies, witnesses, and prosecutors.” (*Id.*)

##### **1. Plaintiff’s Claim is Barred by *Res Judicata***

Defendants contends that Plaintiff’s claim is barred from consideration by this Court under the doctrine of *res judicata*. (ECF No. 15 at 2.) Defendants contend that Plaintiff previously litigated the same issues presented in the instant Complaint in state court in his Petition for a Writ of Mandate in case number MCR 12-015 and in his Petition for a Writ of Habeas in case number HCN 1177 (SCD 2088824, SCD 226640). (ECF No. 15 at 2.) Both state court decisions examined Plaintiff’s placement in isolation and determined that the conditions of Plaintiff’s confinement did not rise to the level of a constitutional violation. (ECF No. 15-2 at 3, 80-84.)

“A federal court must give State court judgments the same preclusive effect those judgment would have in State court.” *Clement v. California Dept. Of Corrections*, 220 F. Supp. 2d 1098, 1107 (quoting

1 *Migra v. Warren City Sch. Dist. Bd. Of Educ.*, 465 U.S. 75, 84 (Cal.  
2 1984). Thus, if a California court would give preclusive effect to these  
3 prior decisions, this Court must do so as well. *Id.* The Ninth Circuit  
4 has explicitly held that a federal court is required to give preclusive  
5 effect to a state habeas decision in a subsequent section 1983 claim  
6 brought in federal court, provided preclusion is warranted under  
7 California state law. *Id.* The party must have had a full and fair  
8 opportunity to be heard on the issue and the issue must have been  
9 determined under federal standards. *Silverton v. Department of*  
10 *Treasury*, 644 F.2d 1341, 1347 (9th Cir. 1981) (giving preclusive effect to  
11 state habeas decision in a subsequent § 1983 claim brought in federal  
12 court).

13 In California, a prior decision will preclude subsequent  
14 consideration of an issue if three conditions are met: (1) the issues  
15 decided in the prior adjudication were identical to those presented in  
16 the subsequent action; (2) there was a final judgment on the merits in  
17 the prior action; and (3) the party against whom the doctrine of *res*  
18 *judicata* is invoked was a party or in privity with a party to the prior  
19 adjudication. *Panos v. Great Western Packing Co.*, 21 Cal. 2d 636, 637  
20 (Cal. 1943); *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift*  
21 *Ass'n*, 60 Cal. App. 4th 1053, 1065 (Cal. Ct. App. 1998).

22 Here, the state court issued two final judgments dispensing of  
23 Plaintiff's Eighth Amendment claims, and Plaintiff was the party  
24 alleging the constitutional violation in both prior actions. Thus, prongs  
25 two and three are met. *Panos*, 21 Cal. 2d at 637. The only remaining  
26 question is whether the prior actions involved the same issues as  
27 Plaintiff's instant Complaint. Whether a prior action involved the same  
28 issue is determined by examining the "primary right" at stake.



1 *Eichman v. Fotomat Corp.*, 147 Cal. App. 3d 1170, 1175 (Cal. Ct. App.  
 2 1983). If the two actions involve the same injury to the plaintiff and the  
 3 same wrong by the defendant, “then the same primary right is at stake  
 4 even if in the second suit the plaintiff pleads different theories of  
 5 recovery, seeks different forms of relief and/or adds new facts  
 6 supporting recovery. *Id.*

7 The same primary right is at issue here as in the prior decisions.  
 8 Plaintiff raised the same issues: the effect on his mental health, the fact  
 9 that his holding cell was not a proper cell, his inability to meet with his  
 10 legal counsel without interference, and the general conditions of his cell.  
 11 (ECF No. 15-2 at 18-30.) The “injury” in both prior claims was  
 12 Plaintiff’s confinement in isolation while awaiting trial as opposed to  
 13 confinement in administrative segregation or general population, and  
 14 the “wrongs” by Defendants were their treatment of Plaintiff and  
 15 refusal to remove him from isolation prior to his trial. (*Id.*) Even if  
 16 Plaintiff’s instant Complaint contains some additional facts or is based  
 17 on a different theory of recovery, this Court must still give preclusive  
 18 effect to the prior state court decisions.<sup>2</sup> *Eichman*, 147 Cal. App. 3d at  
 19 1175.

20 The state courts provided a full and fair opportunity to be heard,  
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22 <sup>2</sup>The only fact in the instant case that differs from the facts presented in  
 23 Plaintiff’s state court proceedings is the duration of Plaintiff’s confinement.  
 24 This does not affect the applicability of *res judicata* to Plaintiff’s claim. While  
 25 the duration of confinement is a factor to be considered by the court, even  
 26 indefinite confinement does not necessarily rise to the level of a constitutional  
 27 violation. *Hutto v. Finley*, 437 U.S. 678, 685-86 (1978). Here, Plaintiff’s  
 28 placement in isolation is only scheduled to last until his trial concludes, just  
 as in Plaintiff’s state court cases. Further, the state court noted that Plaintiff  
 was placed in isolation based on his violent interactions with other inmates  
 while in less restrictive confinement, including asking other inmates to  
 murder the prosecuting attorney and a family member of a witness. (ECF  
 No. 15-2 at 80-84.) Thus, the extended duration of Plaintiff’s confinement  
 does not materially affect his claim.



1 and their decision is in accordance with federal standards. *Silverton*,  
 2 644 F.2d at 1347; *Clement*, 220 F. Supp. 2d at 1107. Accordingly, the  
 3 Court finds that Plaintiff's claimed is barred from reconsideration by  
 4 the doctrine of *res judicata*. The Court **RECOMMENDS** that  
 5 Defendants' Motion to Dismiss be **GRANTED** and Plaintiff's Complaint  
 6 be **DISMISSED**. Further, as amendment to Plaintiff's Complaint  
 7 would be futile, leave to amend should be denied. *Foman v. Davis*, 371  
 8 U.S. 178, 182; *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th  
 9 Cir. 1999).

10 Because the Court finds that Plaintiff's claim is barred, the Court  
 11 need not address Defendants' argument that this Court should adopt  
 12 the reasoning and evidentiary findings of the state court.

## 13 **2. Additional Claims**

14 In his Opposition, though it is unclear, Plaintiff appears to  
 15 contend that dismissal is inappropriate because he also intended to  
 16 allege claims not presented to the state court. (ECF No. 17.) These  
 17 allegations, however, are not enough to rescue Plaintiff's Complaint.  
 18 Plaintiff does not enumerate the claims in his Complaint and the Court  
 19 cannot decipher any clearly stated claim for relief in his Complaint  
 20 other than the Eighth Amendment claim based on his confinement in  
 21 isolation. If Plaintiff believes he possesses legally cognizable claims  
 22 other than an Eighth Amendment claim based on the conditions of his  
 23 confinement, he must seek amendment of his Complaint pursuant to  
 24 Fed. Rule of Civ. Proc 15 or file a new action clearly alleging those  
 25 claims in compliance with Fed. Rule of Civ. Proc. 8.

## 26 **V. Conclusion**

27 For the reasons set forth herein, it is **RECOMMENDED** that  
 28 Defendants' Motion to Dismiss Plaintiff's Complaint be **GRANTED**,

1 and Plaintiff's claim be **DISMISSED** without leave to amend.

2 This report and recommendation will be submitted to the United  
3 States District Judge assigned to this case, pursuant to the provisions of  
4 28 U.S.C. § 636(b)(1) (1988). Any party may file written objections  
5 with the court and serve a copy on all parties by **May 28, 2014**. The  
6 document shall be captioned "Objections to Report and  
7 Recommendation." Any reply to the objections shall be served and filed  
8 by **June 11, 2014**.

9 The parties are advised that failure to file objections within the  
10 specified time may waive the right to raise those objections on appeal of  
11 the Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: May 7, 2014

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15 Hon. Mitchell D. Dembin  
16 U.S. Magistrate Judge  
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